

So Ordered.

Dated: October 21st, 2016



Frederick P. Corbit
Frederick P. Corbit
Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

SHANE YORK,

Debtor.

Case No. 16-01964-FPC13

NOT FOR PUBLICATION

MEMORANDUM DECISION RE:
PAWN 1, INC.'S MOTION FOR
DETERMINATION

THIS MATTER came before the court on October 5, 2016 for a hearing on the Motion for Determination filed by Pawn 1, Inc. ("Pawn 1") [ECF No. 28]. At the hearing, the court heard argument of (1) debtor's counsel, Anastasia Karson, (2) the attorney for Pawn 1, Darren Digiacinto, and (3) the attorney for the Chapter 13 Trustee, Melissa Williams. At the conclusion of the hearing, the court took the matter under advisement. After review of the record, the argument presented, and applicable law, this matter is ready for decision. This court has original and exclusive jurisdiction of this bankruptcy case pursuant to 28 U.S.C. § 1334(a).

1 Pawn 1's Motion is a core proceeding under 28 U.S.C. § 157(b)(2). This
2 memorandum decision includes the court's findings of fact and conclusions of law.
3 For the reasons set forth below, the court finds 11 U.S.C § 362 does not toll the
4 running of the time period for redemption.¹

5 **FACTS**

6 Debtor, Shane York, entered into pawn agreements with Pawn 1, a licensed
7 pawn shop, prior to filing his bankruptcy petition on June 16, 2016 [ECF No. 1]. The
8 pawned property, which was in the possession of Pawn 1 at the time Mr. York filed
9 his bankruptcy petition, includes four guns and a pressure washer ("Collateral")
10 [ECF No. 35]. Pursuant to state law, the pawn agreements specified times by which
11 Mr. York had to redeem the Collateral ("Redemption Dates").

12 Pursuant to the terms of the pawn agreements, Mr. York had no obligation to
13 repay if he did not redeem the Collateral. Mr. York did not list Pawn 1 as either a
14 secured or unsecured creditor on his schedules [ECF No.1]. Additionally, the
15 proposed Chapter 13 plan does not list Pawn 1 as a secured creditor nor does it
16 provide payments to Pawn 1 that would enable Mr. York to redeem the Collateral.

17 The parties agree that Mr. York had a right of redemption at the time this
18 Chapter 13 case was filed. However, the parties disagree on whether the filing of the
19

20 ¹ Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code,
11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 bankruptcy petition extended the redemption periods more than the 60 days provided
2 by § 108(b) of the Bankruptcy Code.

3 Pawn 1 argues that pursuant to § 541(b)(8), the bankruptcy estate no longer
4 includes the Collateral, because Mr. York's right to redeem is limited to the longer
5 of 90 days from the date property was pawned (as provided by state law set forth in
6 RCW 19.60.061) or 60 days after Mr. York filed his bankruptcy petition (as
7 provided by § 108(b)). The later of those two dates for one of the pawned items was
8 August 22, 2016 and was August 15, 2016 for all the other items.

9 Mr. York argues that the Collateral continues to be part of the estate because
10 the time to redeem the Collateral was tolled by the automatic stay set forth in
11 § 362(a). According to Mr. York, the redemptive right held by the estate "raises the
12 transaction to that of a claim that can be pursued" [ECF No. 35]. Therefore,
13 Pawn 1's right to repayment should be treated like a secured claim that can be
14 modified through a Chapter 13 plan pursuant to § 1322(b)(2). Mr. York seems to
15 argue that as long as a debtor files a bankruptcy petition prior to the expiration of the
16 Redemption Dates, then the bankruptcy tolls any redemption period.

17 The disparate positions of the parties presents the court with the need to
18 decide whether Mr. York's right to redeem the pawned Collateral has terminated.

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I. The bankruptcy estate initially includes the redemptive right in the pawned collateral.

The filing of a bankruptcy petition operates as a stay of any act to obtain possession of, or to enforce a lien against, property belonging to the debtor’s estate. *See* § 362(a). Unless the court orders otherwise, the stay continues until such property is no longer property of the estate. § 362(c)(1). Pursuant to § 541(a)(1), the bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” § 541(a)(1); *In re Pettit*, 217 F.3d 1072, 1077 (9th Cir. 2000). While § 541(a) “defines what interests of the debtor are transferred to the estate. . . . [i]t does not address the threshold questions of the *existence and scope of the debtor’s interest* in a given asset,” state law determines the extent of such interests. *In re Raintree Healthcare Corp.*, 431 F.3d 685, 688 (9th Cir. 2005) (emphasis added); *see also Butner v. United States*, 440 U.S. 48 (1979). Applicable state law is Washington Revenue Code Chapter 19.60 Pawnbrokers and Secondhand Dealers.

Although the scope of property included in the bankruptcy estate is broad, and includes most of the debtor's legal and equitable interests in property, some exceptions exist. *See* § 541(a) and (b). Relevant to this discussion is the subsection

1 raised by Pawn 1, § 541(b)(8), which provides that property of the estate *does not*
2 *include*:

3 (8) . . . any interest of the debtor in property where the debtor pledged
4 or sold tangible property . . . as collateral for a loan or advance of
money given by a person licensed under law to make such loans or
advances, where—

5 (A) the tangible personal property is in the possession of
6 the pledgee or transferee;

7 (B) the debtor has no obligation to repay the money,
redeem the collateral, or buy back the property at a
8 stipulated price; and

9 (C) neither the debtor nor the trustee have exercised any
right to redeem provided under the contract or State law, in
10 a timely manner as provided under State law and section
11 108(b)[.]²

12 If all three elements are satisfied, then the Collateral at issue is not part of the estate
13 and is not protected by the automatic stay. The parties do not dispute that the first
14 two elements are satisfied because Pawn 1 continues to possess the Collateral

16 ² Congress added § 541(b)(8) to the Code as a part of the Bankruptcy Abuse Prevention and
Consumer Protection Act of 2005 (BAPCPA), Pub.L. No. 109–8, sec. 1230, 11 U.S.C. § 541(b)(8),
17 119 Stat. 23, in which the section adding § 541(b)(8) was titled “PROPERTY NO LONGER
SUBJECT TO REDEMPTION.” *See Maguire v. Comm’r of Internal Revenue*, 313 U.S. 1 (1941)
18 (stating that a section’s title in its enacting session law is helpful and legitimate in determining
congressional purpose). A leading commentator notes that § 541(b)(8), added by the 2005
19 amendments, is broadly drafted and does not use the word “pawn”, but “[n]onetheless it may be
fairly said that its obvious, fundamental purpose is to declare that certain tangible personal
20 property pledged to pawnbrokers is excluded from property of the estate.” 5 Alan N. Resnick &
Henry J. Sommer, *Collier on Bankruptcy* (“Collier”), ¶ 541.22D (15th ed. 2005).

1 (satisfying subsection (A)), and Mr. York has no obligation to repay the money,
2 redeem the Collateral, or buy back the Collateral (satisfying subsection (B)). The
3 parties dispute whether the debtor or the trustee have exercised any right to redeem
4 in a timely manner as provided under state law and § 108(b) and this depends on
5 whether the redemption period is tolled by the automatic stay pursuant to § 362(a).

6 **II. Redemption periods for pawned collateral pursuant to state and**
7 **federal law.**

8 **a. State law**

9 According to Washington state law, the redemption period for a pawn
10 transaction is 90 days. Specifically RCW 19.60.061(2) states:

11 A pawnbroker shall not sell any property received in pledge, until a
12 minimum of ninety days has expired. However, if a pledged article is
13 not redeemed within the ninety-day period of the term of the loan, the
14 pawnbroker shall have all rights, title, and interest of that item of
personal property. The pawnbroker shall not be required to account to
the pledgor for the proceeds received from the disposition of that item.

15 **b. Federal Bankruptcy Code**

16 If the redemption period provided for pursuant to state law has not yet expired
17 at the time a pawnor files a bankruptcy petition, but will expire in less than 60 days
18 from the petition date, § 108(b) extends the redemption period. Under § 108(b), a
19 Chapter 13 debtor or trustee is entitled to redeem pledged property within 60 days
20 from the date of the debtor's petition. Specifically § 108(b) provides:

1 (b) Except as provided in subsection (a) of this section, if applicable
2 nonbankruptcy law, . . . or an agreement fixes a period within which the
3 debtor . . . protected under section . . . 1301 of this title may file any
4 pleading, demand, notice, or proof of claim or loss, cure a default, or
perform any other similar act, and such period has not expired before
the date of the filing of the petition, the trustee may only file, cure, or
perform, as the case may be, before the later of—

5 (1) the *end of such period*, including any suspension of
6 such period occurring on or after the commencement of the
case; or

7 (2) *60 days after the order for relief*.

8 (emphasis added). Thus, pursuant to § 108(b) a pawnor debtor has the later of the
9 redemption period set by state law or 60 days after the filing of the petition in which
10 to redeem pawned collateral.

11 **III. The automatic stay does not toll the statutory redemption period.**

12 As noted above, § 108(b) sets a time bar on exercising the state law right to
13 redeem property. 11 U.S.C. § 108(b). To determine whether the redemptive right to
14 the Collateral continues past the date set by § 108(b), the court must determine
15 whether the statutory redemption period is tolled by § 362(a). If the redemption
16 period is not tolled by the automatic stay, then the redemption period in this case has
17 expired, subsection (C) of § 541(b)(8) would be satisfied, and therefore, as a matter
18 of law, the Collateral would not be part of the estate.

19 It does not appear that the Ninth Circuit has ruled on this issue, although many
20 lower courts throughout the country have split on the issue. Courts finding that

1 § 362(a) tolls the redemption period appear to rely on equitable principles. Such
2 courts look to the purpose of the Bankruptcy Code and a Chapter 13 debtor's broad
3 power to modify claims. *In re Amant*, 41 B.R. 156, 160-61 (Bankr. D. Conn. 1984).
4 However, such a conclusion fails to adequately explain a statutory basis for
5 determining that the automatic stay provision of § 362(a) prevails over the specific
6 statutory time limits set forth in § 108(b).

7 This court finds more persuasive courts finding that § 362(a) does not toll the
8 running of the time period for redemption, and that the only available extension of
9 time for such periods is the 60 days provided for in § 108(b). *See Whispering Bay*
10 *Campground, Inc. v. Fagan (In re Whispering Bay Campground, Inc.)*, 850 F.2d
11 443, 446 (8th Cir. 1988); *Federal Land Bank v. Glenn (In re Glenn)*, 760 F.2d 1428,
12 1440 (6th Cir. 1985); *In re Farmer*, 81 B.R. 857 (Bankr. E.D. Pa. 1988) (collecting
13 cases); *see also, e.g., In re Frazer*, 377 B.R. 621 (B.A.P. 9th Cir. 2007). Canons of
14 statutory construction comport with this conclusion, instructing courts that when
15 there exists a general provision and a specific provision, the specific provision
16 prevails. *See United States v. Navarro*, 160 F.3d 1254, 1256–57 (9th Cir. 1998).

17 While § 362(a) provides for the automatic stay as a general matter, § 108(b)
18 specifically deals with redemption periods. Therefore, § 108(b) should control with
19 regard to such periods, over the more general provisions of § 362(a). Indeed,
20 allowing § 362(a) to extend the redemption period beyond the 60-day period in

1 § 108(b) would render § 108(b) superfluous. “If Congress had intended that § 362(a)
2 would operate as a stay of redemption periods, it would not have provided *specific*
3 provisions extending redemption periods.” *In re Farmer*, 81 B.R. 857, 861 (Bankr.
4 E.D. Pa. 1988) (emphasis in original).

5 The court notes that its decision is applicable to this narrow set of facts. The
6 court is mindful that § 1322(b)(3) allows modification of rights of secured claim
7 holders to “provide for the curing or waiving of any default” and this court has not
8 foreclosed the possibility that a Chapter 13 plan confirmed prior to the expiration of
9 the statutory redemption period may entitle a Chapter 13 debtor to pay the
10 redemption amount over the life of his or her plan. However, such facts are not
11 present in this case. Prior to the expiration of the Redemption Dates, the debtor did
12 not propose a plan that provided for the redemption of the Collateral. Indeed, prior to
13 the expiration of the redemption period, Pawn 1 emailed both the trustee and
14 attorney for the debtor inquiring whether debtor planned to redeem the property.
15 [ECF No. 29]. The trustee responded that there were no plans to redeem the
16 property. Additionally, although the debtor alleges that “Debtor has made provision
17 for the property in the Chapter 13 plan,” the court finds there is no provision in the
18 plan for this property. [ECF No. 35, p. 4]. Pawn 1 is not even listed as a secured
19 creditor on debtor’s schedules.
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1 The court concludes that Mr. York entered into pawn transactions with
2 Pawn 1 prior to filing his bankruptcy petition and that he did not redeem his pawned
3 property within the time period allowed by the Bankruptcy Code or Washington law.
4 Accordingly, the Court will enter an order that the Collateral is not property of the
5 bankruptcy estate and not available for the debtor to redeem.

6 ///END OF MEMORANDUM DECISION///
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